IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

FIRST APPEAL No 1064 of 1997

WITH
CIVIL APPLICATION NO.6168/97

For Approval and Signature:

Hon'ble MR.JUSTICE S.D.SHAH

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1. Whether Reporters of Local Papers may be allowed to see the judgements?

2. To be referred to the Reporter or not?

3. Whether Their Lordships wish to see the fair copy of the judgement?

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?

5. Whether it is to be circulated to the Civil Judge?

GUJARAT WATER SUPPLY AND SEWERAGE BOARD

Versus

JAYANTILAL RANCHHODDAS THAKKAR

Appearance:

MR HS MUNSHAW for Petitioner
MR SURESH M SHAH for Respondent No. 1
SERVED BY DS for Respondent No. 2
MS LILU K BHAYA for Respondent No. 6

CORAM : MR.JUSTICE S.D.SHAH

Date of decision: 23/09/97

ORAL JUDGEMENT

1. Admit. Mr.H.S.Munsha appears and waives service of admission on behalf of respondent No.1 and Miss L.K.Bhaya appears and waives service of admission on behalf of respondent Nos 3 and 6. Rest of the

respondents served by direct service.

2. The claimant-opponent No.1 herein was a pillion rider on the scooter which was being driven by opponent No.4. Admittedly the scooter bearing Reg.No.GUX 4199 is insured with the New India Assurance Co.Ltd. Opponent No.5 is the owner of the scooter.

3. The other offending vehicle is a jeep bearing Reg.No.GJX 927 which is owned by Gujarat Water Supply & Sewerage Board--the appellant herein who was the respondent No.2 before the tribunal. Admittedly on the date of the vehicular accident the jeep was not insured and its insurance is expired.

4. On 22.1.1987 the claimant was sitting as a pillion rider on the scooter which was driven by the driver while undertaking the journey from village Adipur to village Anjar and at that time the scooter was being driven on the left side of the road as per the say of the claimant. Around 10 in the morning it was found that a rickshaw was going infront of the scooter which signalled to the scooter driver that he may overtake and go ahead and at that time from the opposite side the offending vehicle of the ownership of the appellant was coming. The scooterist undoubtedly will not have any reason as he was covered by the rickshaw going ahead of him and he relied upon the signal given by the rickshaw driver. The jeep which was coming from the opposite direction dashed with the vehicle i.e. the scooter and resulted into bodily injuries to the pillion rider. From the averments made in the petition the claimant wanted to claim amount of Rs.281800/- towards compensation but he restricted the claim to Rs.1 lac only. Said claim petition filed by the claimant was resisted by the appellant herein by filing written statement at Exh.37 and by original respondent Nos 4 & 5 by filing written statement at Exh.46. In the written statement it was nowhere pleaded by the appellant herein who was respondent No.2 before the tribunal that there was contributory and/or composite negligence on the part of the driver of the scooter and but for such contributory negligence the accident would not have occurred. In the absence of such pleading the tribunal was fully justified in not raising any issue about alleged contributory negligence on the part of the scooter driver and as regards the issues framed at Exh.40 even no objection was taken that any material issue was omitted to be framed. As regards issue No.1 as to whether the claimant proved that due to rash and negligent driving of the driver of the jeep bearing Reg.No.GJX 927 on 22.1.1987 the accident occurred and he

received injuries the tribunal recorded finding in affirmative. As regards the quantum of compensation it awarded Rs.1 lac. Being aggrieved by the aforesaid judgment and award of the tribunal dated 22.1.1997 the Gujarat Water Supply & Sewerage Board has preferred this FA. Mr.H.S.Munshaw, Ld.counsel appearing for the appellant has with all vehemence at his command submitted that under no circumstances the driver of the jeep could be held liable or could be held responsible for the accident and in the alternative he submitted that it was, at the most, the case of contributory negligence on the part of the driver of the scooter who tried to overtake the rickshaw which act of overtaking resulted into vehicular accident. He further submitted that referring to the width of the road which was 10 feet only, when the scooter driver overtakes the vehicle he must take care to see that the road from the opposite direction is clear and that no vehicle was coming from other direction. This, perhaps, would have assumed some importance but for the fact that vision of the scooter driver was covered by the rickshaw which was going ahead of him and the rickshaw driver had given signal to the scooterist to go ahead and to take side of rickshaw. The rickshaw driver is not, in any way, involved in the vehicular accident and whether he has intentionally or deliberately given wrong signal, or whether the vehicle of the appellant which was coming from the opposite direction was being rashly and negligently driven would have been a matter of guess work but for the fact that there is clear evidence that the signal was given by the rickshaw driver to the scooterist to overtake the rickshaw. To add to the miseries of Mr.Munsha, there is one additional fact and that is that the primary act of putting the non-insured vehicle on road was itself an act of negligence. In fact, those who are the primary wrong doers in the sense of putting non-insured vehicle on the road can not complain of rash and negligent driving of the vehicle by the scooterist as per the original Law of Torts known in the English law and in " Salond on Torts" there is a specific defences enumerated in the case of negligence under the heading "plaintiff himself wrong doer". By putting the noninsured vehicle on the road primary act of negligence is committed and when the institution is a impersonal institution none cares to see as to whether the insurance of the vehicle is renewed or not and unfortunately that has happened in the present case. Therefore, both on the ground of primary fault on the part of appellant in not getting its vehicle insured and secondly on the ground that from the evidence it transpires that the jeep car has been driven rashly and negligently by its driver and in view of the finding of

fact recorded by the tribunal it shall have to be held that the vehicular accident occurred because of rash and negligent driving of jeep bearing Reg.No.GAX 927.

5. Once the aforesaid finding is found to be just and proper and based on evidence about the amount of compensation awarded much grievance can not be made. In fact, the claimant has reduced the amount of compensation and has restricted it to Rs.1 lac only. From the documentary evidence, the income of the claimant, loss of income which he has suffered and the future loss of income which he would suffer because of 20% permanent disability, no fault could be laid at the doors of the tribunal. In fact, the tribunal has assessed the said amount at Rs.1,30,930/-, but in view of the fact that the claim was restricted to Rs.1 lac only, the tribunal has awarded that much amount only. The award on pain, shock and suffering and award towards nutritious diet etc is within brackets, absolutely just, reasonable and proper and no grievance can be made against such award which is otherwise within brackets.

6. In view of the aforesaid, I do not find any substance in the appeal preferred by the appellant and uphold the judgment and award of the tribunal in its entirety. Appeal is therefore dismissed. No costs.

7. In view of the order on FA, no order on CA. Notice is discharged. No costs.

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